Chapter 4

Judicial Response with Respect to Women Right

Judiciary has contributed to expanding the realm of women’s right by striking down laws, rules and regulations which violate them and by upholding the constitutional validity of protective provisions. Without the intervention of judiciary such constitutional provisions would have remained at the level of mere proclamations. In many landmark judgments, courts have examined the contested claims of women to legal equality and their positive rulings have served to bring in a culture of women’s right in the public domain.¹

The Constitution commands justice, liberty, equality and fraternity as supreme value to usher in the egalitarians social, economic and political democracy. Social justice, equality and dignity of person are corner stone’s of social democracy.² The concept ‘Social Justice’ which the Constitution of India engrafted, consist of diverse principles essential for the orderly growth and development of personality of every citizen. “Social justice” is thus an integral part of “justice in generic sense.” Justice is the genus of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak and deprived sections of the society and elevate them to the level of equality to live a life with dignity of a person.³

Judicial approach in the context of protecting women’s rights is studied in three sets of cases. In the first set, judicial contribution vis-à-vis women’s equality in employment, wages etc have been studied. Second, set of cases include judicial approach in protecting women’s role of motherhood. Judicial contribution as to the protection of women at work place has been discussed in third set of cases.

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(1) **Enforcement of equality and equal remuneration by Judiciary:-**

Issues concerning discrimination in public domain of employment such as marital status of women workers, their right to have children, sex stereotypes reflected in the age of retirement of women workers and wage discrimination etc. have been some of the areas of struggle for women in India. Judiciaries while interpreting various provisions of Constitution expanded the scope of Fundamental Rights and have attempted to bridge the gap between the dichotomy of women’s life as home makers and wage earners.

In *Bombay Labour Union v. International Franchise (P) Ltd.*, a ruling requiring an unmarried woman to give up her employment on marriage was successfully challenged and Court held that such practices are unconstitutional which discriminate women in their employment opportunity. Since the Constitutional code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall substantially, within the same class. Equality of opportunity in matters of employment under Art. 16(1) means equality as between members of the same class of employees and equality between members of separate, independent class.”

A writ petition was filed by the Ms. Muthamma, a senior member of the Indian Foreign Service, complaining that she had been denied promotion to Grade I, has once again reminded past practices of discrimination on the ground of sex. The Supreme Court focused its attention primarily to uphold women protective provision, legislation that provide preferential treatment for woman. In attempting to uphold these legislation the judges, lawyers had done a massive research to justify their decision, why there decision are more woman favouring. According to them social backward position of the woman’s was the main cause of distinction between man and woman.

Justice V.R. Krishan Iyer and P.N. Singhal, held that: The writ petition by Ms. Muthamma, a senior member of the Indian Foreign Service, bespeak a story which makes

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4. A.I.R 1966 SC.942,
one wonder whether Articles 14 and 16 belong to myth or reality. The credibility of the Constitutional mandates shall not be shaken by the Governmental action or inaction but it is the effect of the grievance of Ms. Muthamma that sex prejudice against Indian womanhood pervades the service rules even a third of a century after Freedom. There is some basis for the charge of bias in the rules and this makes the ominous indifference of the executive to bring about the banishment of discrimination in the heritage of service rules. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess.

Commenting further the Muthamma judgment stressed the point that men and women cannot be treated equally in all occupation and situations. A particular job may require a particular sex because of the sensitivities of the sex, or the peculiarities of the social factors or the handicaps of either sex. Even the Constitution has recognised the difference between sexes. It provides for special laws in favour of women due to their peculiar features and also due to God gifted process of procreation of children. In *Air India v. Nergesh Meerza*, as regard the provision of Air India that service of air hostess would stand terminated on first pregnancy, the Court observed that this was a most unreasonable and arbitrary provision.

Yet in another landmark judgment, the issue of discrimination in rules of employment was delivered by the Apex Court in *Air India v. Nergesh Mirza*, wherein; the Supreme Court deal with the three contingencies laid down by Air India, on the basis of which air hostess services were terminated, i.e., (i) on attaining the age of 35 years, (ii) on marriage if it took place within four years of the service and (iii) on pregnancy. Air hostesses of the Air-India International Corporation had approached the Supreme Court against, discriminatory service conditions in the Regulation of Air-India. The Regulations provided that an air hostess could not get married before completing four-years of service. Usually an air hostess was recruited at the age of 19 years and the four year bar against marriage meant that an air hostess could not get married until she reached the age of 23 years. If she married earlier, she had to resign and if after 23 years she got married, she could continue as a married woman but had to resign on becoming

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6 *Supra note* 174.
7 A.I.R 1981 SC 1829.
pregnant. If an air hostess survived both these filters, she could continue to serve until reached the age of 35 years. It was alleged on behalf of the air hostesses that those provisions were discriminatory on the ground of sex as similar provisions did not apply to male employees doing similar work. The Supreme Court upheld the first requirement that the air hostess should not marry before completion of four years of service.

The Court held that; ‘The regulation permits an air hostess to marry at the age of 23 if she joined the service at the age of 19 which is by all standards a very sound and salutary provision. Apart from improving the health of employee, it helps a good deal in the promotion and boosting up of our family planning programme’.\textsuperscript{8} Secondly, if a woman marries near about the age of 20 to 23 years, she become fully mature and there is every chance of such a marriage proving a success, all things being equal.

The Supreme Court struck down the Air India Employees Regulations, Regulation 46(i) (c) relating to retirement of air hostess on being pregnant. The Court held that after having utilized her service for four years, to terminate her service, if she becomes pregnant amounts to compelling the poor air hostess not to have any children and thus interfere with and divert the ordinary course of human nature.\textsuperscript{9} The termination of women from service is not only a callous and cruel act but an open insult to Indian womanhood the most sacrosanct and cherished institution. Such a course of action is extremely detestable and abhorrent to the notion of a civilized society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the cost of all human values, such a provision, therefore is not only manifest unreasonable and arbitrary and exhibits naked despotism and is therefore, clearly violation of Article 14\textsuperscript{10}.

\textit{Explaining the scope of Article 14.} Bhagwati J. observed thus “Equality is a dynamic concept with many aspects and dimensions and it cannot be ‘cribbed, cabined and confined’

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\textsuperscript{8} \textit{Supra note 174.} \\
\textsuperscript{9} \textit{Ibid.} \\
\textsuperscript{10} \textit{Ibid.}
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imprisoned within traditional and doctrinaires’ limits. Article 14 strikes at arbitraries in State Action and ensures fairness and equality of treatment. The principle of reasonableness which legally as well as philosophically is an essential element of equality or non arbitrariness pervades.

Again in *Maya Devi v State of Maharashtra* the requirement that married woman obtain the consent of her husband before applying for public employment was successfully challenged as a violation of the rights guaranteed under Articles 14, 15 and 16 of the Constitution. The Court was of the view that consent requirement was an obstacle to women’s equality. In order to achieve economic independence women must not be treated differently than men. The decision also supports a view that consent requirement contribute to the subordination of women. The decision is commended to be one more step towards equality of sexes. However, it is pity that the judge should opine that “a man and woman are two different classes and the historical truth is that women are weak, they need special protection. It is only by way of special protection that they achieve equality with their male counterpart.

As an outcome of such judgment the traditional roles of women within the domestic sphere could not be viewed as impediments to professional success. As such some progress was made towards gender equality in condition of employment but discrimination continued both in private and public sector. Many a time’s women’s rights could be defeated through contractual agreements between the employer and the employees. These judgments, therefore, marked not the end but just the beginning of the long journey for women’s right to equality in service conditions and employment rules. Women worker soon found that despite of equality provisions they were subjected to inequality.

The judicial support to protect women was also seen in *Omana Oommen v. F.A.C.T.Ltd*. Certain women operators were denied the opportunity to write an internal examination on the basis of restrictions imposed on working hours of women by Section 66 of the Factories Act. The Court held that the condition is purely on sex base. On one side protection

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12 (1986)1SCR 743.
13 A.I.R 1991 Ker . 129.
14 Section 66 of the Factories Act provides that “no women shall be required or allow to work in any factory except between the hours 6a.m to 7 p.m.
was given to the women not to work during nights, by imposing such condition, employer was violating the principle of equality enshrined Article 14 and protective discrimination in Article 15(3) of the Constitution of India.

The next landmark judgment, *Ms Mackinnon Mackenzie and Co. Ltd., v. Audrey D’Costa and another* 15 addressed some of these concerns. This was the case where the lady stenographer was paid less by private sector firm than the male staff. Though the nature of the duties was the same, female stenographers were discriminated against by labeling the male staff as private secretaries. The employer had held negotiations with its employees and settlement was arrived as, which agreed that lady stenographers would be given a lower pay scale than their male counterparts. When this settlement was challenged by the lady stenographers, the petitioners argued that there was no gender discrimination and the nature of the work performed itself was very different by the male and female stenographers. Supreme Court overruled this argument and held discrimination with regard to unequal payment on the ground of sex of the employee to be illegal and directed equal pay for equal worker work of a similar nature. Further it held that the provision of equal remuneration Act, 1976 would overwrite any settlement that the employer may have with the other employees. In making a comparison the authority should look at the duties actually performed by men and women. Where however both men and women work at inconvenient times, there is no requirement that all those who work e.g. at night shall be paid the same basic rate as all those who work normal day shifts. Thus a woman who works during day time cannot claim equality with a on higher basic rate for working nights if in fact there are women working nights on that rate too, Sex discrimination arises only where men and women doing the same or similar kind of work are paid differently. 16 It was a clear cut differentiation on the basis of sex violating the provision of Article 14 of the Constitution of India.

In *Uttarkhand Mahila Kalyan Parishad and others v. State of U.P. and others* 17 it was contended that lady teachers and other female employees in the educational institutions under the State Government were being discriminated against male counterparts who were performing the

15 A.I.R 1987 SC 1281.
16 Ibid.
same work but were getting lower scale of salary and promotional avenues were not open to them in the same proportion as available to male teachers and employees. The Supreme Court held that under constitutional arrangement there is no occasion for differential treatment between male employees and female employees in the educational department, when they were doing the same job, nor there was any justification for preferential treatment in promotional avenues for male teachers.

In *Anuj Garg and others v. Hotel Association of India and others*,*18* Supreme Court was concerned with the constitutional validity of Section 30 of the Punjab Excise Act, 1914 prohibiting employment of “any man under the age of 25 years” or “any woman” in any part of such premises in which liquor or intoxicating drugs were consumed by the public. Supreme Court held that when the original Act was enacted, the concept of Equality between two sexes was unknown. The Court held that provision is ultra-vires of Articles 14, 15 and 19(1) (g). The ruling opened up the scope for women to seek employment in bar serving liquor.

In *State of west Bengal v. Anwar Ali Sarkar*,*19* the Supreme Court held that equality means that all persons in similar circumstance shall be treated alike both in privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another, equal protection of law is available to any person which include company or association or body of individuals.*20* As regards the subject-matter of the legislation their position is the same. Thus, the rule is that the like should be treated alike and not that unlike should be treated alike. The word ‘protection’ in clause ‘equal protection of the laws in Article 14, denotes that ‘the State has to provide proper judicial organisation as an effective machinery to safeguard the substantive right.’*21*

Delhi High Court in March 2010 granted female army officer their just and fair claim for permanent commission with the singeing words that it was not some “Charity being sought but enforcement of their Constitutional rights”. While this prompted the Air force and the Navy to

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19 A.I.R 1952 SC. 75.
20 *Chiranjit la l v. Union of India*, A.I.R 1951 SC 41.
21 *R.D. Shetty v. Airport Authority*, A.I.R 1979 SC 1628.
grant women officers permanent commission. The respondent’s claim that bulk of the army’s junior Commissioned Officers and other ranks hail from rural India who are not ready to accept a woman as their leader in combat situation was rejected by the Supreme Court on the ground of gender discrimination. The Supreme Court held that the time has come for the Army to end this iniquitous situation.

The anxiety of the judiciary to protect the interest of women workers against sex discrimination and arbitrary action of the State is also evident from the decision in State of Jammu and Kashmir and Others v. Dr. Shusheela Sawhney, the Rule 17 of the Central Civil Services Rules, 1956 and Article 35 of the Civil Service Rule which provide for permanent resident of the State as a condition of appointment, apply only at the time of initial appointment and that loss of permanent resident status after marriage should not be a disqualification provision under any law. The Court considered that it is again interference in the concept of equality. At the time of appointment, if a person qualifies as a permanent resident of the State, such person does not lose his continuance in the employment by virtue of having lost his status as a permanent resident of the State.

Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them. Clause (3) of this article provides as under 15(3) nothing in this article shall prevent the State for making special provisions for women and children. It was further held that the rule of equality did not take away from the State the power of classifying persons for legitimate purposes; however such classification could not make arbitrary and without any substantial bases. As a matter of fact, the clause ‘equal protection of the laws’ has provided ample opportunity to the Supreme Court for laying down a number of important rights through several judgments. These judgments upheld the equal treatment of equals in equal circumstances which may be called ‘the rule of parity’.

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24 JKJ 2003(1) p.80.
25 Ragubeer Singh v. Union of India 2003(supp) JKJ HC 783.
From the very inception the Constitution of India declares that equal pay for equal work is an ideal to be translated into action by the State by framing policy with respect to equal remuneration. Keeping in view the term equality and the idea of equal pay for equal work for both men and women an Equal remuneration Act, 1976 was passed by Government of India to give effect to the Article 39(d), of Constitution of India. A milestone in the area of implementation of Equal Remuneration Act was reached with the pronouncement of the Supreme Court decision in *People’s Union for Democratic Rights v. Union of India*, 27 wherein, court ruled that the principle of ‘equality’ in Article 14 of the Constitution has been seen in the provisions of the Equal Remuneration Act, 1976.

In *Raghuban Saudagar v. State of Punjab*, 28 a government direction that women were ineligible for appointment to all positions for men was challenged as discriminatory on the basis of sex. The petitioner was a Deputy Superintendent of a woman’s jail. As a result of the government order, she was denied for promotion. The Court concluded; “where disparities of either sex patently add to or detract from, the capacity and suitability to hold particular post or posts, then the State would be entitled to take this factor into consideration in conjuncture with others.” 29 The Court upheld the restriction on women’s employment while adopting a formal approach to equality, within which the perceived differences between women and men justify the differential treatment and in effect preclude women’s entitlement to equality. Moreover, the court adopted a protectionist approach to gender difference. The court emphasized the difference in physical strength between women and men. While strengthening the equal pay for equal work principle, Supreme Court in *Sanjit Roy v. State of Rajasthan*, 30 directed the state Government not only to pay minimum wages but also to pay wages in accordance with the principle of equal pay for equal work to men and women workers engaged in famine relief work. The Court directed the State to create equal pay scale and as regards creating promotion avenues for woman, the State was directed to get it examined by appointing appropriate committee within two month.

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27 1982 Lab IC 1646.
30 A.I.R 1988 SC.328.
Articles 38 of Constitution provides that the State shall strive to promote the welfare of the people by securing and protecting, as effectively as may, a social order in which justice, social, economic and political shall inform all the institutions of the national life. Sub-clause (2) of this article mandates that the State shall strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities.

Article 39 of Constitution provides; certain principles of policy to be followed by the State. - When women enter the work place, initially the peculiar problem faced by the women at the workplace is the inequality in the wages and discrimination resulting their biological role of child bearing. Government of India did not ignore the problem and take steps to remove the practice of inequality among the wages of male and female worker for same work or area of similar nature. Article 39 specifically requires the State to direct its policy towards securing the following principles: a) Equal right of men and women to adequate means of livelihood; d) Equal pay for equal work for both men and women.

Pursuant to Article 39(d), Parliament has enacted Equal remuneration Act, 1976. Various methods were used by the judiciary in constructing word “Equal pay for equal work” In Randhir Singh v. Union of India, the Supreme Court held that equality in wages is not a fundamental right, is certainly a Constitutional goal and, therefore capable of enforcement through Constitutional remedies under Article 32 of the Constitution. The principle of ‘Equal pay for Equal work’ depend upon the nature of work done, it cannot be judged by the mere volume of work, there is a difference as regards’ the responsibilities and reliability. It is dependent on various factors such as educational qualifications, nature of jobs, duties to be performed, responsibilities to be discharged, experience, method of recruitment, etc. Comparison merely based on designation of posts is misconceived. The Court interferes only if it appears to the court that the decision of the Government is patently irrational, unjust and prejudicial to particular section of employee. In Dharwal Distt. P.W. D .L.D.W. Association v. State of Karnataka, court reiterates that the Principle of ‘equality pay for equal work’ is not expressly declared by our Constitution to be a fundamental right. But it certainly is a Constitutional goal. Article 39(d)

of the Constitution proclaims ‘equal pay for equal work for both men and women’ a Directive Principle of State policy. ‘Equal pay for equal work for both men and women’ means equal pay for equal work for everyone and as between sexes. The dominant objective was to ameliorate and improve the lot of the common man and to bring about a socio-economic justice\(^\text{33}\).

It is also a settled proposition that the evaluation of jobs for the purpose of pay scales must be left to the expert bodies; the law does not prohibit an employer to have different grade of posts in two different units owned by him. Every unit is an independent entity for the purpose of making recruitment of most of its employee. The respondent had not been appointed in centralized services of company. As every unit may make appointments taking into consideration the local needs and requirement, such parity claimed by the respondent cannot be held to be tenable.\(^\text{34}\) Equal pay for equal work is a concept which requires for its applicability complete and wholesome identity between a group of employees claiming identical pay scales and other group of employees who have already earned such pay scales. The problem about equal pay cannot always be translated into a mathematical formula held by the Supreme Court in \textit{State of Haryana \& others v. Tilak Raj \& others}\(^\text{35}\).

However in \textit{State of Haryana v. Jasmer Singh \& others}\(^\text{36}\) the Supreme Court considered the provisions of Article 39(d), 14 and 16 of the Constitution and held that the principle of ‘equal pay for equal work’ is not always easy to apply. There are inherent difficulties in comparing and evaluating the work done by the different persons in different organisations, or even in the same organisation. There may be difference in the educational or technical qualifications, which may have a bearing on the skills which the holders bring to their job although the designation of the job may be same. There may also be other considerations which have relevance to efficiency in service, which may justify differences in pay scales on the basis of criteria such as experience and seniority, or a need to prevent stagnation in the cadre, so that good performances can be elicited from persons who have reached the top of the pay scale. There may be various other similar considerations which may have a bearing on efficient performance in a job. The Court


\(^{34}\) \textit{Steel Authority of India Ltd. \& others. v Dibyendu Bhattacharya} A.I.R 2011 SC 897-898.

\(^{35}\) A.I.R 2003 SC 2658.

\(^{36}\) A.I.R 1997 SC 1788.
further stressed, “there should be proper job evaluation whenever sex discrimination is alleged. When the ground of difference in wages between the male and female worker on the basis of sex alone appear to the court, it is a clear violation of Section 4(1) of The Equal Remuneration Act, 1976. In order to judge whether a separate category has been carved out of a class of service,

the following circumstances have generally to be examined:-

(a) the nature, the mode and the manner of recruitment of a particular category from the very start.
(b) the classification of the particular category.
(c) the term and condition of service of the member of the category.
(d) the nature and character of the post and promotional avenues.
(e) the special attributes that the particular category posses which are not to be found in other classes, and the like.

Applying the above mentioned tests it was held that having regards to the various circumstances, incidents, service conditions, promotional avenues, etc of the Assistant Flight Purser and Air Hostess of Air India the inference was irresistible that Air Hostesses; though the members of the cabin crew were an entirely separate class governed by different set of rules, regulations and conditions of service. Therefore though peculiar conditions did form part of the regulations governing Air Hostesses, which could not amount to discrimination so as to violate Article 14 of the Constitution. Equality of opportunity in matters of employment under Article 16(1) means equality between members of the same class of employees and not equality between members of separate, independent classes.”

The Supreme Court again in Food Corporation on India v. Shyamal K. Chatterjee attempted to extend the benefit of the equal remuneration to the casual workers, performing the same work. Furthermore, in Radha Charan Patnik v. State of Orissa the Orissa High Court held that if ‘marriage’ is taken as disqualification for woman to be selected as district judges or

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38 2000 LL.R 1293 (SC).
compel woman to not resign from service after marriage, the same condition should be applied on man. The Court, however, held that while the maintenance of efficiency must be considered, disqualification of the married women from eligibility amounted to sex discrimination violating rights guaranteed in Part III and Part IV of the Constitution of India. Women’s right to work is also protected by the court by denying the husband’s claim of restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955, as it being violative of the right to privacy and human dignity guaranteed by Article 21 of the Constitution. Equal pay for equal work was recognised by the High Court of Jammu and Kashmir in numerous cases.

Article "42 of the Constitution of India provides for just and humane conditions of work and maternity relief. The State shall make provisions for securing just and humane conditions of work and for maternity relief".

Article 43: provides for living wage, etc., for worker stating that the "State shall endeavour to secure, by suitable legislation or economic organisation or in any other way to all workers, agricultural, industrial or otherwise. Work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas".

**Judicial approach in protecting women’s role of motherhood.**

It is in the background of the provision contained in the Article 39, specially in Articles 42 and 43, that the claim of the respondents for maternity benefit and the action of the petitioner of denying that benefits to its women employees has to be scrutinized so as to determine whether the denial of maternity benefit by the petitioner is justified in law or not. Since Article 42 specially speaks of “just and humane conditions of work” and “maternity relief”, the validity of an executive or administrative action in denying maternity benefits has to be examined on the

Anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of.

The right to health to a worker is an integral facet of meaningful right to life to have not only a meaningful existence but also robust health and vigour without which worker would live a life of misery. Lack of health denudes his livelihood, compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread – winning to him and his dependents should not be at the cost of his health and vigour of the workman. Facilities and opportunities, as enjoined an Article 38, should be provided to protect to protect the health of the workman. Provision for medical test and treatment invigorates the health of the workers for the higher production or for efficient service. Continued treatment, while in service or during pregnancy is a moral, legal and constitutional concomitant duty of the employer and the State. Discrimination and protection of someone in some circumstances is necessity, for instance women in the course of pregnancy need special care. Treating women equal with women not in family way is violation of protective measures, because these two women are not same in health. Protecting women by guarantying maternity leave and securing job is to protect the modesty of women folk. It will be absurd and ridiculous to say that this will discriminate against men, by not protecting their modesty.

In JK Cotton Spg. & Wvg. Mills Co. Ltd v. Labour Appellate Tribunal of India\textsuperscript{42}, Gajendra Gadkar J. speaking for the Court said; “Indeed the concept of social Justice has now become an integral part of industrial law that it would be idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial disputes. The concept of social justice is not narrow, or one sided or pedantic, and is not confined to industrial adjudication alone. Its sweep is comprehensive. It is founded on the basic ideal of socio economic equality and its aim is to assist the removal of socio economic disparities and inequalities, nevertheless is dealing with industrial matter, it does not adopt a doctrine approach and refuses to deal blindly to abstract notions but adopts a realistic and pragmatic approach.”

It was rightly remarked that a just social order can be achieved only when inequalities are obliterated and everyone almost half of the segment of our society have to be honoured and

\footnote{\textsuperscript{42} A.I.R 1964 SC 737.}
treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of a child to a women, who is in the service the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working women would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth.

The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that they may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre-or post-natal period. Women enjoy benefit not only for procreation of child; the maternity leave is given to working female for tubecotomy.43

Rejecting the contentions of Municipal Corporation where, it was further intended by the corporation that the benefits contemplated by the Maternity Benefit Act, 1961 can be extended only to working women in an industry and not on the muster roll women employees on the Municipal Corporation, the Supreme Court observed the municipal corporations or the boards have already been held to “industry” within the meaning of Industrial Act referring leading decisions on the point. In Budge Budge Municipality v. PR Mukherjee.,44 it was observed that the municipal activity would fall within the expression undertaking and as much would be an industry. The decision would followed in Baroda Borough Municipality v. workmen,45 which the Court observed that those branches of work of the municipality which would regard as analogous to carrying-on of a trade or a business, would be “industry” and the disputes between the Municipalities and their employees would be treated as an “industrial disputes”.

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43 Section 10(a) Ins. by The Maternity Benefit (Amendment) Act, 1995. “Tubecotomy is one of the medical process through which women control their pregnancy temporarily.

44 A.I.R 1953 SC 58.

45 A.I.R 1957 SC 110.
This view was reiterated in *Corporation of the city of Nagpur v. Employees*,\(^{46}\) in this case the various departments of the municipality were considered and various departments including the General Administration and the Education Department were held to be covered within the meaning “industry”. The Punjab and Haryana High Court in *Municipal Committee Bhiwani v. Padam Singh*\(^ {47}\) held that the fire brigade service maintained by the Municipal Committee was an “industry”.

The most radical approach came in the case of *Municipal Corporation of Delhi v Union of India*\(^ {48}\) which involves importance of maternity leave in working women’s life. In this case the court held that whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be friendly and sympathetic towards her and must realise the physical difficulties which working woman face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. Yet in another case *State of Kerala v. N. Raman’s*\(^ {49}\), the petitioner working as senior assistant in the Kerala applied for maternity leave which was sanctioned. In continuation thereof she was sanctioned leave without allowance for one year. Her application for further extension of leave, along with medical certificate before the State government was considered. The condition imposed by the State government that the period of leave did not count for the service benefits including pension was rejected by the single judge of the high court. Single Bench decision was affirmed by the Division Bench by supporting that the leave sanctioned to the respondent was in continuation of the maternity leave benefit and therefore the applicable rule was rule 102 and not rule 88 as contended by the appellant ‘State’. The leave applied for the acute medical necessity and in continuation of the maternity leave to look after the new born, who was suffering from congenial disability the benefits under rule 102 was to be extended to her. Court held that the imposition of the condition that she was not entitled to service benefits including pension was illegal and incorrect.

\(^{46}\) A.I.R 1960 SC 675.
\(^{47}\) 1973 Lab, IC 1512.
\(^{48}\) A.I.R 2 000 SC 1274.
\(^{49}\) 1999 (2) LLJ, 485.
Similarly, in another case denying maternity benefit to a person merely because she was working on a consolidated salary has been held to be illegal and malafide.\(^{50}\)

Again *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and another*, \(^{51}\) is yet another case where the Supreme Court of India has examined the provision of the Maternity Benefit Act, 1961 as a whole to find out the intention of the parliament and main objects of the Act. In this case the female workers (muster roll) engaged by the Municipal Corporation of Delhi raised a demand for grant of maternity leave which was made available to regular female workers but was denied to them on the ground that their services were not regularised and therefore, they were not entitled to any maternity leave. Their case was espoused by the Delhi Municipal workers’ Union and, consequently the question “whether female workers working on muster roll should be given any maternity benefit? If so, what directions are necessary in this regard? ” was referred to the Industrial Tribunal for adjudication.

The Union field a statement of claim in which it was stated that the Municipal Corporation of Delhi employs a large number of persons including female workers on the muster roll and they are made to work in that capacity for years together though they are recruited against the work of perennial nature. It was further stated that the nature of duties and responsibilities performed and undertaken by the muster-roll are the same as those of the regular employees. The women employed at the muster roll which has been working with the Municipal Corporation of Delhi for the years together, has to work very hard in construction projects and the maintenance of the roads including the work of digging trenches etc. but the Corporation does not grant any maternity benefit to female workers who are required to work even during the period of mature pregnancy or soon after the delivery of the child. It was pleaded that the female workers required the same Maternity Benefits as were enjoyed by the Female workers under the Maternity Benefit Act, 1961. The denial of these benefits exhibits a negative attitude of the Corporation in respect of a humane problem. The Maternity Benefit Act, 1961 aims to provide all maternity facilities to a working woman in a dignified manner so that she may overcome from


\(^{51}\) 2000 SCC (L&S) 331.
the state of motherhood honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post natal period.\textsuperscript{52}

The Supreme Court observed that not long ago, the place of women in rural areas had been traditionally her home; but the poor illiterate women forced by sheer poverty now come out to seek various jobs so as to overcome the economic hardship. They also take up jobs which involves hard physical labour. The female workers who are engaged by the Corporation on muster roll have to work at the site of construction and repairing of roads. Their services have also been utilized for digging of trenches. Since they are engaged on daily wages, they, in order to earn their daily bread, work even in an advanced stages of pregnancy and also soon after delivery, unmindful of detriment to their health or the health of the new-born baby.

In sequel, Supreme Court in a question of whether Sundays are to be counted in calculating the amount of maternity benefit in \textit{B.Shah v. Labour Court},\textsuperscript{53} held that the term period of week signifies a cycle of seven days including Sundays. Maternity benefit is to be made for the entire period of the actual absence, i.e. for all days including Sundays, which may be wage less holidays falling within that period, and not only for intermittent periods of six days thereby excluding Sundays falling within that period. Again the word “period” emphasizes the continuous running of the time and recurrence of the cycle of seven days. These computations ensure that the woman worker gets for the said period not only hundred percent wages but also benefits for Sundays and the rest days.

As a social welfare enactment a beneficial construction of its provision by the Supreme Court with a view to enable the women worker not only to subsist but also to make of her dissipated energy, nurse her child, preserve her efficiency as a good worker is maintained. Section 5 of Maternity benefit Act, make it clear that a women worker who expects a child is entitled to Maternity Benefit for a maximum period of twelve weeks which is split up into two period viz. pre-natal and post-natal or ante natal period is limited to the period of women’s actual absence extending upto six weeks immediately preceding and including the day on which her delivery occurs and the second one which is post-natal compulsory period consist of six weeks

\textsuperscript{52} Municipal Corporation of Delhi v. Female Workers (Muster Roll) A.I.R 2000 SC 1274.
\textsuperscript{53} A.I.R.1978 SC.12; (1977) 4 SCC 384.
immediately following the day of delivery. The benefit has to be calculated for the aforesaid two periods on the basis of average daily wages.\textsuperscript{54}

According to the explanation appended to Section 5 (i) of the Act, the average daily wage has to be computed taking into consideration the average of the woman’s wages payable to her for the day on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity or one rupee a day whichever is higher. For fixing the average daily wages, it is therefore first to be ascertained whether the wages which were paid or were payable to the woman was for time work or for piece work.

The Maternity Benefit Scheme was modified and new Scheme called Janani Suraksha Yojna was introduced. In \textit{PUCL v. U.O.I},\textsuperscript{55} Court emphasised that the Maternity Benefit Act is a beneficial piece of legislation which is intended to achieve object of doing social justice to women workers employed in factories, mines and plantation. In the case of \textit{Government of Andhra Pradesh v. P.B. Vijay Kumar},\textsuperscript{56} the Supreme Court has ruled that implementing Article 15(3), the state may fix a quota for appointment of women in Government services. Also, a rule saying that all other things being equal, preference would be given to women to the extent of 30\% of the post was held valid with reference to Article 15(3). The courts inquiry reveal that the provision, which treats women differently, is specifically intended to eradicate historic discrimination against women and thus, that a substantive approach to equality in this context requires a corrective approach to gender difference\textsuperscript{57}.

In \textit{Management of Kallayar, Estate. Jaya Shree Tea and Industries Ltd, Coimbatore v. Chief Inspector of Plantations, Madras}\textsuperscript{58} a milestone in the area of implementation of Maternity Benefit Act was laid by the Madras High Court when court granted the miscarriage leave to the women worker’s for a period of six weeks. On behalf of the management it was

\begin{footnotes}
\item[55] A.I.R 2008 SC 495.
\item[56] A.I.R 1995 SC1648.
\item[57] Supra note 228.
\item[58] 1999 LLJ 180.
\end{footnotes}
contended that to avail of the benefits under section 5, 9 and 10 of Maternity Benefit Act, 1961 a pregnant woman should have worked for 160 days in the 12 calendar months immediately preceding the date of expected delivery. Rejecting these contentions the Court held that provisions of Section 5 and Section 9 are independent. The qualifying period of 160 days of actual work as pre-requisite for claiming maternity benefit under Section 5 is not applicable for claiming leave for miscarriage. Miscarriage is an unexpected special event which is beyond the control of any individual woman worker.

Again in a case of *K. Chandrika v Indian Red Cross Society*\(^{59}\) court ordered that the petitioner be reinstated in service with continuity of service for the purposes of computation of service benefit. The Court confronted in number of cases, sometime the employer denied the rights to provide benefit to the woman worker on the ground that they did not fall under the definition of State. Rejecting the contention of the petitioner, the court held that Rail India Technical and Economical Services, (RITES) is an instrumentality of State (under Article 12 of the Constitution of India). The Court ordered accordingly that the woman worker was entitled to maternity benefit.

The Supreme Court in *Punjab National Bank and Another v. Astamija Dash*\(^{60}\) held that the subordinate legislation must be made in conformity with the parliamentary Act. The Regulation framed by board of directors of Bank failed to provide for grant of Maternity Leave and other benefits to which women employee would be entitled to in terms of the Maternity Benefit Act 1961 is violative. Further emphasizing on term equality Court held that Article 14 does not apply in vacuum. Whereas persons absolutely similarly situated would also attract the wrath of Article 14\(^{61}\).

Judicial support with respect to maternity right is extended not only to working women but also to a female student who was deprived to appear in exam only on the ground that she not attended the classes, being in the advanced stage of pregnancy, or due to delivery of child. According to the Court it is an act which completely negates not only the conscience of the

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\(^{60}\) A.I.R 2008 SC 3182.

Constitution but also women’s rights and concept of gender equality as such a female student cannot be deprived of her student status or be detained in any semester due to her inability to attend classes because of her pregnancy.

A Division Bench of the Punjab & Haryana High Court in the case of Raj Bala v. State of Haryana and Ors.\(^{62}\) had the occasion to consider the claim of the mistresses, teachers, lecturers etc., appointed on contract basis in different schools and colleges in the State of Haryana. Their claim was resisted by the State Government on the ground that the petitioners being the contractual appointees are not entitled to the maternity leave. This contention was rejected on the basis of the decisions of the Apex Court in the case of Rattan Lal\(^{63}\) and Municipal Corporation\(^{64}\). Directions were issued to the State Government to grant the benefit of maternity leave to the petitioners. In the said decision it was further observed that there is hardly any distinction between an ad hoc employee and a contractual employee. Both are engaged for a definite term as may be specified in the letter of appointment. The Court strongly condemn the policy of the State Government under which 'ad hoc' teachers are denied the salary and allowances for the period of the summer vacation by resorting to the fictional breaks of the type referred to above. These 'ad hoc' teachers shall be paid salary and allowances for the period of summer vacation as long as they hold the office under this order. Those who are entitled to maternity or medical leave shall also be granted such leave in accordance with the rules.\(^{65}\)

Performance of the biological role of childbearing necessarily involves withdrawal of women from the workforce for some period. During this period she need extra care, it does not mean she cannot work for her living, but it is essential for protect her health as well as of the child within womb. This is the time when woman need more money for her medical expenses and for nourishment of child. In order to enable the woman worker to subsist during this period and to preserve health, the law lay down the protection in the form of maternity benefit, so that she can be able to perform both her productive and reproductive roles efficiently.\(^{65}\)

\(^{62}\) (2002) 3 RSJ 43.
\(^{64}\) Supra note 236.
The requirement of being unmarried is not only confined to employment opportunities but also extends to training courses which are offered to unmarried women or widows without encumbrances as was held in *Maya Devi v. State*\(^{66}\) where married women or women with children were excluded. In *Air India v. Nergesh Meerza*\(^{67}\) the SC founded that the termination of the services of Air Hostess on the ground of pregnancy or marriage within four years is manifestly unreasonable and wholly arbitrary and violative of Article 14 of the Constitution and should, therefore, be struck down.

Again in another case *Neera Mathur v. LIC*\(^{68}\) the Supreme Court held that discharging the women during her probationary period inter alia, on the grounds that at the time of her appointment she had not make declarations regarding her last menstruation period in order to suppress the fact of her pregnancy was violated of Article 21 of the Constitution which confer on her right to live with dignity and disclosing such facts were interfering her right to privacy. The Court orders the L.I.C to delete such columns in the declaration which compel the female workers disclose her private facts. The Court found the furnishing of such information to be “embarrassing if not humiliating”. *In E.P. Royappa v. State of Tamilnadu*\(^{69}\) In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other to the whim and caprice of an obsolete monarch where an act is arbitrary it is implicit in it that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14 *In State of Andhra Pradesh v. Nalla Raja Reddy*,\(^{70}\) Court laid down the official arbitrariness is more subversive of the doctrine of equality than statutory discrimination. In respect of statutory discrimination one knows where he stands, but the wand of official arbitraries can be waved in all directions indiscriminately. In numerous cases the Court use the term “fair sex”, by the word fair sex according to the judges mean pregnant woman because pregnancy is not disability but one of the natural consequence of marriage and is a part of married life. Any

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\(^{66}\) (1986) 1 SLR 743.

\(^{67}\) (1981) 4 S.C. 1838.

\(^{68}\) (1992) 1 SCC 286.

\(^{69}\) A.I.R 1947 SC 555, (1979) 2 SR 348.

\(^{70}\) A.I.R 1967 SC 1458 at P. 1468; (1967)3 SCR 28 ).
difference, therefore in appointment and in continuance of service made on the ground of pregnancy cannot but be held to be extremely arbitrary.

Speaking about the power of Supreme Court under Article 32 in Bodhisatwa Gautam v. Subhra Chakraborty, S. Saghir Ahmad, J observed that:

“The Supreme Court, as the highest Court of the country, has a variety of jurisdiction. Under Article 32 of the Constitution, it has the jurisdiction to enforce the Fundamental Rights guaranteed by the Constitution by issuing writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and certiorari. Fundamental Rights can be enforced even against private bodies and individuals. Even the right to approach the Supreme Court for the enforcement of the Fundamental Right under Article 32 itself is a Fundamental Right. The jurisdiction enjoyed by Court under Article 32 is very wide as this Court, while considering a petition for the enforcement of any of the Fundamental Rights guaranteed in Part III of the Constitution, can declare an Act to be *ultra vires* or beyond the competence of the legislature and has also the power to award compensation for the violation of the Fundamental Rights. For the exercise of this jurisdiction, it is not necessary that the person who is the victim of violation of his fundamental right should personally approach the Court. The Court can itself take cognizance of the matter and proceed *suo motu* or on a petition of any public-spirited individual. This Court through its various decisions has already given new dimensions, meaning and purpose to many of the Fundamental Rights especially the Right to Freedom and Liberty and Right to Life. The Directive Principles of State Policy have also been raised by this Court from their static and unenforceable concept to a level as high as that of the Fundamental Rights. Supreme Court has innumerable times, declared that ‘Right to Life’ does not merely mean animal existence but means something more, namely, the right to live with human dignity. Right to Life would,
therefore, include all those aspects of which go to make a life meaningful, complete and worth living.”

In Bodhisattva Gautam v. Subhra Chakraborty, commenting on the potential of women, Supreme Court observed that “a women, in our country, belongs to a class or group of society who are in a disadvantaged position on account of several social barriers and impediments and have, therefore, been victim of tyranny at the hands of men with whom they, fortunately, under the Constitution enjoy equal status. Women also have right to liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They must have the liberty, the freedom and of course, independence to live the roles assigned to them by Nature so that the society may flourish as they alone has the talents and capacity to shape the destiny and character of men anywhere and in every part of the world.”

Therefore, it must be held that the right to health and medical care is the fundamental right under article 21 read with Articles 39 (c), 41 and 43 of the Constitution and make the life of a workman meaningful and purposeful, with dignity of person. Right to life includes the protection of health and the strength of the worker is minimum requirement to enable a person to live with human dignity. The State, be it Union or State Government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigour of the workman during the period of employment, leisure and health even after the retirement as basic essential to live life with health and happiness.

The health and the strength of the worker is integral facet of right to life. Denial thereof denudes the workman the finer facet of life violating Article 21. The right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human right to a workman assured by the Charter of Human Rights, in the Preamble and Article 38 and 39 of the Constitution. Facilities for medical care and health against the sickness ensure stable manpower for economic development and would generate devotion to duty and dedication to give the worker best physically as well as mentally in production of goods or services. Health of

75 A.I.R 1996 SC 922.
the worker enables him to enjoy the fruit of his labour keeping himself physically fit and mentally alert for leading a successful life, economically, socially and culturally. Medical facilities to protect the health of the workers are, therefore, the fundamental and human rights to the workman. The employee State Insurance Act and the maternity benefit provide for payment of wages and allowances for the maternity.

Supreme Court in *Kakali Gosh v. Chief Secretary and others,*76 lays that the female employees of Central government was entitled to two years uninterrupted leave for child care, which may also include illness. Jammu & Kashmir High Court in the case of *Simi Dutta v. State,*77 has allowed the claim of a lecturer appointed on ad hoc basis for maternity leave, rejecting the stand of the State Government that there has to be a distinction between regular female employees and the ad hoc one.

In *Tasneem Firdous v. State*78 the petitioner as ‘Rehbar-e-taleem’ teacher in middle School Yaripora of Anantnag District, applied for three months maternity leave on 6-7-2004, which was sanctioned to the extent of one month without remuneration, honorarium. Aggrieved thereby, she challenged Chief Education Officer (C.E.O’s) said order dates 16/6/2004 and seek its quashment on the ground that it violates her Constitutional, legal and other rights. In reply, official respondents have inter alia pleaded that leave was sanctioned to petitioner in terms of government order no. 337 of 2004 where under only thirty day maternity leave without honorarium was available to her, because she is not in regular employment of the government, but on a probation for a period of five years, after successful completion whereof, she would be entitled to claim regular appointment and thereafter only maternity leave benefit under section 14 of the Jammu and Kashmir(herein after J&K) Civil Services (Leave) Rules 1979 would be available to her and presently she could not claim the said leave at par with regular government employees etc. As not satisfied with the government order no. 396 Edu. of 2000 dated

76 Law ( SC) 2014.
78 2006 (3) J&K, HC 432.
A person engaged under Rehbar-e-Taleem Scheme shall be entitled to:-
i. 15 days casual leave in a calendar year with honorarium;
28.04.2000 the petitioner counsel pleaded that the order is too cryptic and short to have anything by way of preamble, explanation, or appendix, which could reflect the considerations and features/factors, those have gone into making thereof; particularly with reference to maternity leave which has usually be restricted to 30 without honorarium/remuneration. There is also nothing in the said order nor has anything been brought forward to suggest as to what necessitated or occasioned deviation from the usual period available to female employees in case of maternity leave. It may be appropriate to notice the provision of Rule 41 (1) of J&K Civil Service (Leave) Rules 1979 at this stage, hereunder 135 days maternity leave is permissible to female employees.  

In *Anima Goel v. Haryana State Agricultural Marketing Board,* the Jammu and Kashmir High Court stayed government order in which Government had asked a female contractual doctor, who is on maternity leave, to join her duties or face action. Justice Virender Singh came to rescue doctor by saying the two communications issued by the Government, wherein she was asked to join the duties at the earliest failing which a strict action will be taken against her. Dr. Bilquees Khurshid, who is working in Budgam district under National Rural Health Mission (NRHM), schemes on contractual basis has challenged the Rule 10(iii) of SRO 225 of 2003, wherein contractual appointee is entitled to sixty days maternity leave without honorarium. She said the maternity leave granted to the contractual employees runs contrary to the mandate of the Directive principles of State policy, under which ninety days of maternity leave are granted to regular employees. Accordingly the Court ordered the respondent to consider the application of the petitioner for the extension of maternity leave in favour of contractual employee’s as it is granted to the regular employee of the State. In Jammu and Kashmir different standards had been applicable for the contractual and regular employee. Many contractual employees were debarred from claiming the bonus, benefit and allowance during

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ii. 30 days leave without honorarium on account of accident, serious illness and maternity in a calendar year;  
iii. The leave so availed shall not constitute a break in continuous engagement as such.

80 Rule 41 (1) of J&K Civil Services (Leave) Rules 1979, “A female government servant with less than two surviving children may be granted maternity leave by the authority competent to grant leave for a period which may extend upto 135 days from the date of its commencement. During such period she shall be paid leave salary equal to pay drawn immediately before proceeding on leave.”

81 LLJ 64 PH, 2008[1].
summer vacation as well as they get maternity leave without honorarium. The denial of wages to female contractual and Rehbar-e-Taleem teacher was discrimination not on the basis of sex, but a differentiation on the basis of appointment, came to be considered. After elaborately discussing the legal provisions and taking note of the social and human aspects, the Hon’ble Court allowed the claim of the Female Workers (Muster Roll) for maternity leave at par with regular female workers.83

In *Rabia Khatoon v. State of J&K*,84 petitioner was “appointed as medical officer Indian System of Medicine (ISM) under National Rural Health Mission (NRHM) scheme in year 2008 and was posted in District Kulgam, the learned council from petitioner side pleaded that the female employees appointed on contractual basis cannot be discriminated by the respondents in denying the same treatment in matter of grant of maternity leave as is being given to the permanent female employees of the J&K State. It was contended that child requires constant care and vigil on the part of mother. The child born to a permanent female employee and the contractual female employee would constitute one. The child in both the cases has to be treated uniformly. Even the mothers who give birth to the children also from one class and cannot be subjected to discrimination simply on the basis that one mother is permanent employee of the government and other is working on contractual basis.

**Judicial contribution vis. a vis. Protection of women at work place:**

There are several other measures, both legislative and judicial, which have served to enhance women’s right. One significant move in this direction have been the *Vishaka Guidelines* issued by Apex Court for providing safe environment at work place and to ensure protection of female employees from sexual harassment. The Supreme Court has gone beyond its Constitutional mandate to defend rights of women at workplace and in the absence of specific legislation on the subject, the Supreme Court took upon itself the task of preparing a comprehensive set of ‘guidelines and norms’ and stressed that such guidelines be treated as law within the meaning of Article 141 of the Constitution. Taking serious note of the increasing

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83 *Municipal Corporation of Delhi v. Female Workers (Muster Roll) and another*, 2000 SCC (L&S) 331.
84 2012 (4) J&K HC-646.
menace of sexual harassment at work place court emphasised that the employees in work places as well as other responsible persons or institutions must observe the guidelines to ensure the prevention of sexual harassment at work place.\textsuperscript{85}

\textit{In Vishaka v. State of Rajasthan},\textsuperscript{86} a three-Judge Bench of the Supreme Court categorically held that each incident of sexual harassment or sexual assault at work result in violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim’s fundamental rights under Article 19(1)(g)’ to practice any profession or carry out any occupation trade or business’. Such violation therefore, attracts the remedy under Article 32 for the enforcement of these fundamentals rights of women. The Court reminded that the fundamental rights to carry on any occupation, trade or profession depend on the availability of a safe working environment. Moreover, right to life means life with dignity. Apart from Articles 32 and 14, 19(1)(g) and 21 of the Constitution of India, the Supreme Court in \textit{Vishaka}\textsuperscript{87} also found the provision of Articles 15, Art.42, Art.51-A,Art 51-A (g) and 253 relevant as they also “envisage judicial intervention for eradication of this social evil. The court also held, ‘in the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of International Conventions and norms are significant for the purpose of the interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein\textsuperscript{88}.

The Court considered it necessary for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the protection of woman at work place. These guidelines were used as precedent by the lower judiciary till 2013 in the field of sexual harassment of women at work place. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional

\textsuperscript{85} \textit{Vishaka v. State of Rajasthan} (1997) 6 SCC 244.


\textsuperscript{87} \textit{Vishaka v. State of Rajasthan} (1997) 6 SCC 244.

\textsuperscript{88} \textit{Ibid.}
guarantee. The adoption of “Zero tolerance” policy in harassment cases as required by the Supreme Court has been helpful in dissuading potential harasser and identifying and responding harassing behaviour in its early stage.

The judgment of the Apex Court was followed by the division bench of the Delhi High Court that the dismissal of the harasser from service though not required any regular enquiry preceded the dismissal, compulsory retirement of the harasser is sufficient to achieve the goal of sexual harassment policy. Yet in another case dismissal of harasser from service instead of transfer to another working place was considered an appropriate penalty. Court’s verdicts relating to the harassment were in consonance with the objectives mentioned in the Beijing Statement.

In Nilabati Behera v. State of Orissa a provision in the International Covenant on Civil and Political Rights (ICCPR), was referred to support the decision that International Conventions and norms can therefore, be used for construing the fundamental rights expressly guarantee in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity.

Sexual harassment is not confined to unwelcome physical conduct on the part of perpetrator. Therefore, physical contact of the perpetrator with the victim is not essential ingredient of ‘sexual harassment’. This was made clear by a Division Bench of the Supreme Court in Apparel Export Promotion Council v. A.K. Chopra. In this case the perpetrator worked as a Private Secretary to the chairman of the Apparel Export Promotion Council, the appellant. The victim, a lady, was employed with the appellant as a clerk-cum typist. She was not competent or trained to take dictation. The perpetrator, however, insisted that she went to take decision from the Chairman and type out the matter. Under the perpetrator’s pressure she went to

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89 Supra note 249.
90 Id.241.
94 (1993) 2 SCC746;1993 SCC (Cri) 527.
95 A.I.R 1999 SC 625.
take dictation from the Chairman. The perpetrator told her to type it at the Business Centre of the hotel, which was located in the basement of hotel. He offered help her so that the director did not find fault with her typing. The moment she typed the letter, he sit close to her and touched her despite her objection. In a departmental inquiry that preceded the perpetrator’s dismissal, the enquiry officer concluded that the perpetrator had ‘molested’ the victim and tried to touch her person with ulterior motives despite reprimands by her. The Supreme Court said, ‘the entire episode reveal that the perpetrator had harassed, pestered and subjected by a conduct which against moral sanctions and which did not withstand the test of decency and modesty and which projected unwelcome sexual advances’96.

Until Act relating to harassment came into existence, the judgments given by Supreme Court of India in cases related to harassment of women at workplace were considered as precedent by State judiciary and were followed in the cases of similar nature. In Jammu and Kashmir State where the Act, Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013 is yet to be incorporated the judgments of the Supreme Court are still followed as precedent. In a case of lady doctor working in government hospital Samba strict action was initiated against the harasser under the respected penal provision of the State. Yet in another case health minister of Jammu and Kashmir State Shabir Ahmed Khan was asked to resign on a complaint being made against him by a woman, who claimed that she was assaulted by minister97.

The Supreme Court has demonstrated great judicial activism while coming to rescue of the working women and ensuring genders equality in the matter of appointment and promotion. While discussing the equality of women at work place the Court in Vishaka’s case held that gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right and have received global acceptance. The obligation of the Supreme Court under Article 32 for the enforcement of the fundamental rights in the absence of legislation must be viewed along with the role of judiciary as envisaged in the Beijing Statement of Principles of the Independence of the judiciary in the LAWASIA region.

97 India today, Feb,7,2014.’ Asit Jolly and Naseer Ganai.
These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. Further it has been seen that Court has done a commendable job in enforcing the rights provided in Maternity Benefit Act, 1961 and under Equal Remuneration Act.1976. The court had liberally construed the Acts. It is now accepted rule of judicial construction that regard must had to International Convention and norms for construing domestic law. Court’s decisions relating to the protection of women’s rights have been greater. These cases relate to virtually every branch of law Constitutional, family law, property law, criminal and taxation law. Heightened support from judiciary is helpful in safeguarding women rights in domestic and public sphere. One can see the impact of the decision in glaring judgments like Air India v. Nergesh Meerza, Vishaka and others v. State of Rajasthan and others and in Municipal Corporation of Delhi v. Female Workers (Muster Roll) where court realised the physical difficulties’ which a working women would face in performing her duties at the work place while carrying baby in her womb. Court’s attitude towards the women is very sympathetic so that they may overcome from the state of motherhood honourably with economic security. In all the above discussed cases the Court uphold the legislative protection and Court’s interference in certain women related matters compels the government to bridge the loopholes if any, in service matters.